



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 6, 1995

Ms. Susan K. Lefler
Assistant City Attorney
City of Austin
Department of Law
Norwood Tower
P.O. Box 1088
Austin, Texas 78767-1088

OR95-1356

Dear Ms. Lefler:

You ask whether certain information is subject to required public disclosure pursuant to chapter 552 of the Government Code. Your request was assigned ID# 36290.

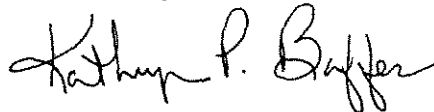
The City of Austin (the "city") received two open records requests from an individual for information about the person who replaced him and some statistical information about the race, gender, and age of employees placed on the city's reduction in force list. You inform us that the requestor has filed an age discrimination claim against the city with the Equal Employment Opportunity Commission ("EEOC"). You inform us that the requestor's EEOC claim is pending. You contend that the information requested is excepted from required public disclosure pursuant to section 552.103 of the Government Code. You have submitted for our review a copy of the EEOC complaint.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). We have determined in prior rulings that a pending complaint before the EEOC indicates a substantial likelihood of potential litigation. Open Records Decision Nos. 386 (1983), 336 (1982). You have made the requisite showing that some of the requested information relates to pending litigation for purposes of section 552.103. However, you have not shown how the requested information regarding gender and race relate to the pending EEOC complaint of age discrimination. Consequently, you must release the information requested about the age and gender of the individuals placed on the reduction in force list. You may withhold the remaining requested information pursuant to section 552.103 of the Government Code.

Regarding the information that you may withhold, we note that once information has been obtained by all parties to the litigation, through discovery or otherwise, a section 552.103 interest no longer exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103. Therefore, any records that the requestor has had prior access to during the grievance process with the city may not be withheld pursuant to section 552.103. We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KPB/ch

Ref: ID# 36290

Enclosures: Submitted documents

cc: Mr. Harold Beucus
8906 Pointer Lane
Austin, Texas 78758
(w/o enclosures)